



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200718037

FEB - 5 2007

T:EP:RA:41K

Uniform Issue List: 408.03-00

Legend:

Taxpayer A =  
IRA X =  
Amount A =  
Financial Institution M =  
Financial Institution B =

Dear :

This is in response to your request dated July 27, 2006, and as supplemented by letter dated December 8, 2006, submitted on your behalf by your authorized representative, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("the Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested

Taxpayer A, age      received a distribution on April 4, 2005, from IRA X totaling Amount A. Taxpayer A's failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer A's medical and mental illnesses, which impaired his ability to make financial decisions and to understand the consequences of his actions. Taxpayer A further represents that Amount A has not been used for any other purpose.

According to medical documentation submitted by Taxpayer A, Taxpayer A is suffering from a neurological impairment that has adversely impacted his judgment and cognitive abilities, such as, verbal communication and memory.

On April 4, 2005, Taxpayer A contacted Financial Institution M to discuss investments. During the discussion with a representative of Financial Institution M an argument erupted over the selling of a certain stock. Taxpayer A abruptly demanded that all his accounts held by Financial Institution M be immediately liquidated and he demanded a check for all his accounts before he would leave the office. Taxpayer A received a check in Amount A from IRA X and then departed. Nothing on the check indicated that the funds were being withdrawn from an IRA.

Taxpayer A deposited Amount A in a non-IRA account at Financial Institution B on April 7, 2005, and did not advise his spouse of his action. Because of his mental and medical impairment Taxpayer A did not realize that Amount A was from an IRA and that it should have been rolled over into another IRA.

Taxpayer A's authorized representative asserts that at the time of the withdrawal, Taxpayer A was receiving treatment for his condition and documentation submitted with this ruling request attests to Taxpayer A's condition.

Based on the facts and representations, you request a ruling that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code ("the Code") with respect to the distribution of Amount A.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error, (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that a failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) was due to Taxpayer A's medical and mental illnesses, which impaired his ability to make financial decisions and to understand the consequences of his actions. Documentation submitted establishes that at the time of the withdrawal, Taxpayer A was receiving treatment for his condition.

Additionally, the documentation submitted with this ruling request shows that Amount A remains in a non-IRA account with Financial Institution B and has not been used for any purpose.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution to Taxpayers A of Amount A from IRA X. Pursuant to this ruling letter, Taxpayer A is granted a period of 60 days as measured from the date of the issuance of this letter ruling to make a rollover contribution of an amount not to exceed Amount A (except as noted below) to another IRA (or IRAs) described in Code section 408(a). Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such IRA contribution, the contribution will be considered a rollover contribution within the meaning of Code section 408(d)(3).

Please note that, pursuant to code section 408(d)(3)(E), this ruling letter does not authorize the rollover of the Code section 401(a)(9) minimum required distributions for calendar years 2005 and 2006.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

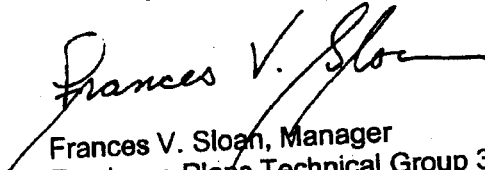
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If you wish to inquire about this ruling, please contact  
Please address all correspondence to

SE:T:EP:RA:T3.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans Technical Group 3

Enclosures:  
Deleted copy of letter ruling  
Notice of Intention to Disclose